

The Gazette of India

EXTRAORDINARY PART II—Section 3 PUBLISHED BY AUTHORITY

No. 236] NEW DELHI, FRIDAY, SEPTEMBER 18, 1953

ELECTION COMMISSION, INDIA NOTIFICATION

New Delhi, the 7th September 1953

S.R.O. 1735.—Whereas the election of Shri Gurdial Singh, as a member of the Legislative Assembly of the State of PEPSU, from the Bassi constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Sunder Lal, S/o Shri Ram Lal Advocate, R/o Bassi, Tehsil Bassi, District Fatehgarh Sahib PEPSU,

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission,

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal

BEFORE THE ELECTION TRIBUNAL, KAPURTHALA AT PATIALA.

V B Sarwate, *Chairman*

Jai Ram Saxena, *Member*

Kartar Singh, *Member*

ELECTION PETITION No 202 OF 1952

Sunder Lal son of Ram Lal, Advocate, resident of Bassi, Tahsil Bassi, District Fatehgarh Sahib, PEPSU—*Petitioner*

Versus

- 1 S Gurdial Singh of village Lehra Advocate, now residing at Bassi, Tahsil Bassi, District Fatehgarh Sahib PEPSU,
- 2 S Hazura Singh son of Nihal Singh, Jat of village Gharuan, Tahsil Bassi, District Fatehgarh Sahib PEPSU,
- 3 Shri Gurdhari Lal, Brahmin of Bassi, Tahsil Bassi, District Fatehgarh Sahib PEPSU,
- 4 Shri Shakti Pershad, Brahmin of Bassi, Tahsil Bassi, District Fatehgarh Sahib PEPSU,
- 5 S Joginder Singh Mann of village Talania, Tahsil Bassi, District Fatehgarh Sahib PEPSU,
- 6 S Brijinder Singh Mann, of village Talania, Tahsil Bassi, District Fatehgarh Sahib PEPSU;

7. S. Achhra Singh Advocate, Bassi, Tahsil Bassi, District Fatehgarh Sahib. P.E.P.S.U.;
8. S. Ganga Singh of Bassi, Tahsil Bassi, District Fatehgarh Sahib. P.E.P.S.U.;
9. S. Lachman Singh son of Jaimal Singh of village Ghogha, Tahsil Bassi, District Fatehgarh Sahib. P.E.P.S.U.;
10. Shri Ram Parshad Pleader of Bassi, Tahsil Bassi, District Fatehgarh Sahib. P.E.P.S.U.—Respondents.

Order delivered on 27-8-53

This election petition arises out of the general election in January, 1952 in the Bassi Constituency of the P.E.P.S.U. Legislative Assembly. The petitioner and the respondents had filed their nominations but the returning officer rejected the nomination papers of respondents 9 and 10 for certain defects. As a result of the election which followed, the respondent No. 1 who was a nominee of the Akali Party was found to have secured the highest number of votes and was declared returned. The petitioner who was nominee of the Congress Party sought to have the election declared void on the ground of the rejection of the nominations of respondents 9 and 10 being improper and the same having materially affected the result of the election. He also averred that the election of the returned candidate was void due to a number of corrupt and illegal practices which he alleged had been committed by the respondent No. 1 or by his agents with his consent or connivance. The respondent No. 1's return of election expenses is also challenged as being false in material particulars and so is its varification.

(2) The petition being strenuously opposed by respondent No. 1, the following issues were framed for trial:—

- (1) (a) Whether the nomination papers of Gyani Lachhman Singh and Shri Ram Parshad respondents No. 9 and 10 improperly rejected by the Returning Officer?
- (b) Were the nomination papers of these respondents defective in any other particulars as urged by the respondent No. 1 and were the nominations liable to be rejected for such defects?
- (c) Has the result of the elections been materially affected by the improper rejection of these nomination papers?
- (2) Is the return of election expenses of respondent No. 1 false in any material particulars as alleged by the petitioner?
- (3) Does the petitioner prove the commission of corrupt practice of bribery by respondent No. 1 as alleged in para. 11 of the petition in respect of S. Hazura Singh?
- (4) Does the petitioner prove commission of corrupt practice of bribery by respondent No. 1 or his agents as alleged by him in paragraph 2 sub-paragraphs (b) to (q) of the list of particulars?
- (5) Does the petitioner prove commission of corrupt practice of intimidation and undue influence upon himself and the voters by the respondent No. 1 or his agents as alleged in paragraphs 12 and 13 of the petition?
- (6) Does the petitioner prove the commission of corrupt practice under section 123, clause (3) of the R.P. Act 1951, by the respondent No. 1 himself or through his agents in respect of ballot papers as alleged in paragraphs 5, 6 and 7 of the list of particulars?
- (7) Does petitioner prove the commission of corrupt practice under Section 123 clause (8) of the R.P. Act 1951 by respondent No. 1 or his agents as alleged in para. 8 of the list of particulars?
- (8) Does the petitioner prove the obtaining of assistance by the respondent No. 1 from any Government servant in furtherance of the prospects of his election which would be a corrupt practice under Section 123 clause 8 as alleged by him in para. 9 and 24 of the list of particulars? In respect of what officers are such corrupt practices proved?
- (9) Does petitioner prove the commission of the corrupt practice under Section 124(5) by the respondent No. 1 as alleged in paragraphs 25 and 26 of the list of particulars?
- (10) Is the respondent No. 1 guilty of the illegal practice under section 123 clause (3) in issuing the postcards like the one produced as Ex. P-5 by the petitioner as alleged in para. 27 of the list of particulars?

- (11) What corrupt practices or illegal practices are proved to have been attempted in this case and by what persons? Was the result of election materially affected by any of them?
- (12) What is the proper order to be made under Section 98 and 99 of the R.P. Act in this case?

3. Even before the petition came up for trial the P.E.P.S.U. Legislative Assembly was dissolved by the President's proclamation dated 9th March 1953 under Article 356 of the Constitution of India (which also gave a direction for reconstitution of the Assembly after fresh General Elections). Since this was supposed to have the effect of making the seat vacant for fresh elections, the respondent No. 1 thought that this election petition was rendered infructuous and could not be pursued for any purpose whatsoever. By an application which he made he moved for its dismissal. The Tribunal Constituted of S. Mehar Singh as Chairman and S. B. Kartar Singh and Shri Jai Ram Saxena as Members found by a majority (S. Mehar Singh dissenting) that the dissolution of the assembly did not affect the petition to any extent and that all the questions raised by the petitioner, still remained open for inquiry as before. This was the Tribunal's view about maintainability of all the petitions which were then pending before it and the same order disposed of the point of the effect of dissolution of the Assembly in all the petitions—the finding being that no petition was affected by the dissolution. That order has been reproduced as Annexure 'A' to the final order in Election petition No. 204 'Lachman Singh Versus Basawa Singh' disposed of on 30th June 1953 (published in the *Gazette of India Extraordinary* dated 27th July 1953) and it is not necessary to repeat it here.

4. Though the dissolution of the Assembly did not render unnecessary the determination of any of the various grounds raised by the petitioner, it did certainly have the effect of damping the enthusiasm of the parties. The petitioner perhaps realized the futility of canvassing largely the points which would, if proved, result in securing a declaration of the election being void. He has concentrated on proof of a few corrupt practices with the purpose of drawing attention to the type of mal-practices which according to him were allowed to be committed with impunity at the election and a finding of the commission of which might result in the disqualification of the returned candidate or his alleged supporters. We accordingly proceed to discuss only such of the issues upon which the petitioner has chosen to produce evidence before us.

5. *Issue No. 1.*—The petitioner is a staunch congress man and we should think quite sincere too in his professions. He is, however, inclined to despise even the small foibles amongst the men who do not belong to his party which has naturally brought him into conflict with the officialdom or at least the section of it whom he suspects of having a communal outlook and an anti-congress bias. His election petition is through-out strewn with complaints against certain officials concerned in the conduct of the elections, that they had set their face against and were doing everything they could to damage the cause of the Congress candidate and incidentally to help the Akali party candidate the respondent No. 1 in securing his return. He begins by pointing out that his clash with the local officials had started even in May 1951 since in an address presented to the then Chief Minister of P.E.P.S.U.'s Congress Cabinet at a conference in Mustafabad, he had openly charged the officials of his Fatehgarh Sahib District as being corrupt and communal. We say nothing about the propriety of such strong and direct assertions made by him but have no doubt that due to this attitude of his, even before the elections he was no favourite with many local officials. When the elections came on he started with a suspicion that there was attempt in some official quarters to demoralise the Congress cause and this brought about a number of clashes between him and certain officials. These the petitioner thinks to have been inspired by the respondent No. 1 and he has accordingly alleged them as corrupt and illegal practices ascribable to the respondent No. 1 making his election void.

6. The rejection of the nominations of Lachhman Singh respondent No. 9 and Ram Parshad Respondent No. 10 by the Returning Officer for very trivial and imaginary reasons are alleged to have been a part of the scheme of the Returning Officer to spite the Congress and help the cause of the Akali Party Candidate. Though we find nothing to attribute the rejection to any preconceived scheme, we must say that they were definitely misconceived and improper. Lachhman Singh's nomination paper was rejected "because the address is not correctly given". In item No. 5 of the nomination paper requiring address the entry was "village Ghoga, Thana Bassi District Fatehgarh Sahib". That these particulars are correctly stated has not been disputed and it may, therefore, appear to be doubtful what the Returning Officer meant by saying that the address was not correctly

given. In the margin of the nomination paper against this item the Returning Officer has written in red chalk the words "No Post Office" from which it is inferred that he considered the address incomplete for non mention of the Post Office which serves the village Ghoga. We have not been referred to nor are we aware of any rule or instructions that mention of Post Office is necessary to render an address complete. The dictionary meaning of the word 'address' is name of the place to which person's letters are directed (Concise Oxford Dictionary). That is mentioned as village Ghoga and its location is precisely indicated by the mention of the Police-Station within the jurisdiction of which and the District in which it lies. Lachman Singh P.W. 24 has produced some letters Exs. P 23 to P 25 which were addressed as above, without mention of the Post Office and which reached him promptly. The respondent sought to explain this by stating that the letters were despatched from places within the same Tahsil and the local Post Office could not have any difficulty in finding out the Post Office serving the village Ghoga. Even a distant Post Office could in the same way locate the village from the mention of the District and the Police Station. We cannot, therefore, regard the address to be incomplete and must find that the rejection of the nomination was improper.

7. The respondent sought to support this rejection for another reason namely that in item '8' Lachman Singh in giving his electoral roll number gave description of the electoral area as "village Ghoga, Thana Bassi, Tahsil Bassi District Fatehgarh Sahib". It is urged that this is mistaken in so far that the name of the Tahsil is stated to be Bassi, though infact the Tahsil is named Sirhind. Sirhind is no doubt the Tahsil headquarter but we are told by the petitioner that the official name of this Tahsil is Bassi and not Sirhind. We find that the electoral roll on the basis of which Lachman Singh was expected to fill in the entry in Item '8' names the Tahsil as Bassi. We cannot, therefore, find any error in this entry either though the officially notified name of the Tahsil may be Sirhind and not Bassi as the respondent contends. The definition of "Serial Number of an elector in an electoral roll" (which is the information to be furnished in item 8) as given in R. 2(1)(d) of the R. P. (Conduct of Election and Election Petitions) Rules 1951 shows that in stating it the description of the electoral area is to be given by reference to the area for which the roll has been prepared as will identify the entry relating to the elector in the electoral roll. If, therefore, the description of the area is given precisely as printed in the electoral roll it will surely facilitate identification of the entry more readily than it may be possible to do if any improvement as suggested by the respondent had been attempted. The objection now raised by the respondent would thus be puerile and untenable even though, as he wants to say, the Tahsil name may be Sirhind.

8. Shri Ram Pershad's nomination paper was rejected "because it does not give correct name and age of the candidate which does not tally with the age and name in the electoral roll" Shri Ram Parsad is a practising pleader of Bassi and was evidently known to the Returning Officer. In the nomination paper he described himself as "Ram Parsad Father's name Sada Nand, age 45 years" and it is undisputed that these particulars are true to facts. In the electoral roll the entry against serial No. 3318 which he indicated as referring to him and which undoubtedly was intended to relate to him is "Ram Parshad father's name Sada Nand age 23 Pleader". Now this '23' is evidently a printing error—the age at the time of preparation of the manuscript roll appears to have been '43' which the printer misread as '23'. The roll is printed in Punjabi. In printing the word 'Ram' written ' ', a dash (—) has also been printed below it making it look like ' ' and this we are told can be read as "Room" or "Goom" also. These are the discrepancies in the name and the age for which the Returning Officer felt justified in rejecting the nomination. We have no doubt that in trying to be over critical in this manner, he showed ignorance of the provisions in S. 33(5) of the Representation of the People Act 1951. The candidate himself presented the nomination paper and there being no doubt about his identity the Returning Officer could at once realize the printing errors in the electoral roll. He does not say that he had any doubt on the point of Shri Ram Parsad being duly qualified according to Art. 173 of the Constitution as being not less than 25 years of age. This was, therefore, clearly a case covered by Proviso (b) under S. 33 (5) which lays down that the Returning Officer may when necessary direct that any clerical or printing error in the corresponding electoral roll entry shall be over-looked. We find that nominations of both Lachman Singh and Ram Parsad were improperly rejected.

9. Upon improper rejection of a nomination a presumption arises that the result of the election is thereby materially affected. This proposition is so well established now that we need not refer to the innumerable decisions of the

Election Tribunals on the point. The presumption is not un rebuttable but we can find nothing proved in this case to rebut it. In respect of Shri Ram Parsad absolutely no evidence for rebuttal has been attempted. Reliance is placed on the written statement filed by him as a respondent in this case in which he has stated that he would have withdrawn his candidature if his nomination paper had not been rejected. He also stated that he had been asked to put in his nomination paper and take his chance only if the nomination of the petitioner was rejected. We are unable to find the presumption rebutted by this mere statement of Ram Parsad in the pleadings unsupported by any evidence.

10. Regarding Lachman Singh, it is pointed out that he was one of the applicants for congress ticket—his claims to be accepted as a congress nominee being founded upon his long association with that institution, of his sufferings and sacrifices for the congress cause and upon his being President of the Bassi Tahsil Congress Committee. For the respondent it is urged that as a sincere congress man Lachman Singh was not expected to act contrary to the pledge given by him at the time of applying for congress ticket and would have withdrawn his candidature since the congress adopted the petitioner as the nominee and his nomination had been accepted. The pledge was no doubt signed undertaking not to stand as a candidate in the election, if he was refused the congress ticket. This was not, however, a pledge prescribed by the law of the land and refusal to abide by it would not have exposed Lachman Singh to any legal penalty. Lachman Singh filed his nomination paper even after the decision of the Congress Parliamentary Board had been given adopting Sunder Lal as the nominee. Lachman Singh tells us as P.W. 24 that he filed the nomination paper because he was in earnest about contesting the election and he was also hoping for the decision of the Parliamentary Board being revised in his favour after acceptance of his nomination. He also states that he was determined to contest the election even if the congress finally refused to adopt him because he wanted to show after a trial of strength, if necessary, how he had served the congress cause better than any other person in that area. Reading between the lines of his evidence we can discern the internal rivalries amongst these congress men of Bassi and do not doubt that Lachman Singh might have acted in the manner he says he would have done upon acceptance of his nomination. Finding his nomination rejected, he sought intervention of the higher authorities of Congress for getting the alleged order of rejection rectified. Nothing could, however, be done to help him in the state of the law as presently prevailing. This goes to show that Lachman Singh was seeking nomination for furtherance of his own election and not as a dummy or a covering candidate for the petitioner with any certain probability of his withdrawing after acceptance of his nomination. That he worked in support of petitioner in the election showed nothing more than his sincerity as a congressman and his desire, despite the internal differences, to present a solid front of the congress against the rival political parties in the election. We cannot find that Lachman Singh would not have remained in the election after acceptance of his nomination and with him also the contest, it is not possible to visualise how the election would have actually proceeded and to find that Gurdial Singh would have fared no worse than he actually did. We accordingly find that the nominations of Lachman Singh and Ram Parsad were improperly rejected and the rejection had materially affected the result of election and in consequence the election must be declared to have been wholly void.

11. *Issue No. 2.*—The petitioner's objections to the respondent's return of Election expenses are detailed from (a) to (o) in para. 1 of the particulars. We do not find any substance in them. No evidence was produced in support of the objections and in arguments reference was made to only a few of them. We deal with only those that were so referred. Some vouchers have been objected to because they read both as bills presented to the respondent and as receipts for the payments made by him—some of these being in the form of cash memos given by the trades-men. We do not think that it was necessary to obtain separate bills and receipts. The details of the description and value of each item appear in these vouchers while the total amount is shown as received by the payee. Thus all the necessary information has been given. It was not necessary that payments should have been acknowledged by the very person in whose name the business concerned was carried on and if therefore, the assistants of Pritam Singh Gojran of Patiala or S. Nirbhai Singh of Bassi acknowledged receipt of payments due to them, the vouchers would be in order. There is no evidence that the respondent also really spent anything in the shape of fares for any journeys undertaken or did in-fact undertake any journeys when he engaged the services of Bus No. 1112 P.U. or when he obtained copies of electoral roll from Nabha. The respondent it appears was using a motor vehicle for election propaganda before 19th December 1951 for which hire has not been accounted for

in the return. The respondent explains that it was a vehicle belonging to the Akali Party which was allowed to be used by him in return of the sum of Rs. 100 which he had contributed to the party fund and that the cost of petrol for running the vehicle has been shown in the return. We think this is sufficient explanation and the return cannot be found to be false in material particulars for failure to show a notional payment on account of its hire. So also if there is any mistake in proper classification of the several items of expenditure shown, the return cannot be regarded as false.

12. The respondent was in Government Service as Public Prosecutor at Kapurthala. He resigned that appointment just on the eve of filing his nomination paper for Bassi Constituency and came down to live at Bassi where he has since resided in a rented house. From this very house, he kept on running his election and it was used by him for his election office also during the election period. The objection of the petitioner is that the rent of the building during election period should have been shown in the Return. The respondent explains that the house was not engaged by him for election purposes, but for his ordinary residence and profession as a lawyer which he decided to pursue after resigning his appointment. We accept this explanation and as no separate expenditure was incurred for hiring an election office it was not necessary to show any sum on account of rent in the Return. We cannot find the return of election expenses to be false in any material particulars.

13. *Issues 3, 4 and 5.*—In paragraph 2 of the particulars the petitioner made allegations in item (A) about the winning over of the respondent No. 2 Hazura Singh who had been a congress man to the side of the Akali Party by offer of a large bribe. No evidence was, however, given on this point and in the arguments the petitioner stated that he abandoned the charge. Likewise the charges in items (b) to (g) in the same paragraph in which allegations of intimidation and threat to voters at several places or attempts to win them over by offer of liquor or money were made were also given up. The petitioner has thus abandoned the charges in paragraphs 11, 12 and 13 of the petition and 2, 3 and 4 of the particulars out of which issues 3, 4 and 5 arose. We accordingly find the issues in the negative.

14. *Issue No. 6.*—No evidence has been given regarding particulars alleged in para. 7 relating to attempted purchase of ballot paper from one Mst. Harnam Kaur. Evidence on this issue has been confined to the cases of the personation by one Jagat Singh for his brother Teja Singh at Gharuan polling station on 19th January, 1952, and by one Dera Singh for the registered voter Fauja Singh on 23rd January 1952, at polling station Bassi. There is no doubt that these cases of false impersonation did take place. The men were detected immediately after they had exercised their votes. They were arrested and prosecuted and have since been convicted also having confessed the charge at their trials. The question here is if the respondent Gurdial Singh is shown to have been concerned in these cases of false personation so as to be disqualified for commission of corrupt practice under clause (3), Section 123.

15 Jagat Singh is resident of Gharuan. His name was not on the electoral roll, but that of his elder brother Teja Singh was. Teja Singh was, however, absent from the village at the election time having gone away to Malaya and Jagat Singh went up to the polling station and giving himself the name and electoral roll No. of Teja Singh obtained the ballot paper. When he was arrested and his statement was recorded by the Presiding Officer S. Janak Singh P.W.2 he stated that he had been persuaded by one Bhapa to thus personate for his absent brother. Bhapa is a common term of address used by the local residents for refugees hailing from the Rawalpindi district now part of West Pakistan. There is no doubt that in that statement (exhibit p. 6) Jagat Singh was referring as Bhapa to R.W. 5 Prem Singh who is a refugee settled in Gharuan where he is keeping a shop. In his evidence before us Jagat Singh as P.W.5 has stated that this Bhapa came to his house and induced him to go to the polling station to exercise vote in the name of his absent brother giving him an assurance that no harm would come to him. Then the Bhapa took him to his shop and there brought a copy of the electoral roll from the camp of S. Gurdial Singh near the polling station and having traced the electoral roll number of Teja Singh, issued to him a slip of that number, the slip bearing a symbol of Tir Kaman which was the election symbol of the respondent. Jagat Singh states that armed with this slip he went to the polling station, applied for ballot paper giving his name as Teja Singh and exercised his vote. He has here stated, as he did in exhibit P. 6 also, that at Bhapa's shop two other men of his village Ajmer Singh and Chanchal Singh were also present they having come there to get slips of their electoral roll numbers from that man. This was to suggest that the Bhapa was known to be canvassing for and working in support of the Akali Party candidate.

16. Jagat Singh is no doubt an accomplice whose evidence would require corroboration in material particulars. Such corroboration is not, however, wanting in this case at least to prove the fact that Bhapa had provided slip of electoral roll number to Jagat Singh and in fact this has been furnished by witnesses whom the respondent examined on his side. Hakim Jagan Nath P.W. 16, Kuldeep Singh P.W. 17 and Narsingh Dev P.W. 18 who were workers of the petitioner present in or near the polling station on that day had been instrumental in challenging Jagat Singh as an impersonator. On the side of the respondent an attempt has been made to explain the association of Bhapa with Ajmer Singh and Chanchal Singh as disclosed in the earliest statement of Jagat Singh, Prem Singh giving evidence as R.W. 5 has stated that Narsingh Dev and Jagan Nath the congress workers had come to his shop with a copy of electoral roll bringing this Jagat Singh with them. They had desired him to find out the electoral roll number of Teja Singh son of Dharam Singh because the roll being in Punjabi they could not themselves read it. Prem Singh accordingly found the number, noted it on a slip and handed it to Jagat Singh. Ajmer Singh and Chanchal Singh on seeing that Prem Singh had an electoral roll in his hand came up to him and requested him to find their numbers also from it. But Narsinghdev and Jagan Nath would not allow the roll to be referred to for helping these men. They snatched the roll from Prem Singh and walked away with Jagat Singh in the direction of the polling station.

17. In this way there has been an attempt on behalf of the respondent to fasten the procuring of this impersonation of Jagat Singh on the workers of the petitioner and to explain the fact of the slip brought by Jagat Singh to the polling station being in the hand writing of Prem Singh which could not be disputed in view of Jagat Singh's consistent statement all throughout starting from the earliest. We are not satisfied that Narsinghdev and Jagan Nath were ignorant of Punjabi language and for tracing out the serial electoral roll number of Teja Singh had to take the help of this Prem Singh who was no friend of the congress men but on the contrary had pronounced sympathies for the Akali Party. This is clear from the fact that Ajmer Singh and Chanchal Singh had gone to him and as they state failing to get their slips from him obtained them from Akali Party camp. His sister's husband Giani Barkat Singh R.W. 25 who had been deputed by the Akali Party to work for Gurdial Singh in the election was staying with him at that time. This is admitted by Prem Singh himself though Barkat Singh to dissociate himself from Jagat Singh's impersonation denies having been a guest of his wife's brother and untruthfully, and against Prem Singh's own evidence states that he was lodging with another remote relative. Barkat Singh had to pretend such indifference towards Prem Singh because in the evidence of the petitioner's witnesses it had appeared that while Jagat Singh had been queuing up at the polling station amongst the voters waiting to receive the ballot papers, this Barkat Singh had been waving his hand to him to push on. We feel that it is a ridiculous suggestion as has been made by the respondent by production of this evidence namely that these congress workers having persuaded Jagat Singh and procured his impersonation, immediately got him arrested and Jagat Singh submitted to such treachery on their part without demur and made statement involving the innocent Prem Singh. We totally disbelieve the evidence of the respondents' witnesses above referred to and find that Jagat Singh's version is true in so far as he states that he was persuaded by Prem Singh Bhapa to go and cast his vote and was also provided with the slip.

18. To make this a corrupt practice under clause (3) of Section 123 it was necessary to prove that Jagat Singh's application for ballot paper was procured by the respondent or by one of the respondent's agents or with his connivance. We do not find any evidence to bring home the charge to the respondent in this way. There is no evidence that Prem Singh Bhapa was appointed by Gurdial Singh to work for him nor can we infer such appointment from the fact that Prem Singh was seen issuing slips to a few men like Jagat Singh, Ajmer Singh or Chanchal Singh at his shop. No such inference is possible also from the circumstances like the following which have been brought out in the evidence:

That Giani Barkat Singh R.W. 25 the Akali worker (who was sent on purpose to work for Gurdial Singh and so must be held to have been his agent) was relative of Prem Singh and was putting up with him. That Prem Singh's shop is close to the Gurdawra in which Granthi Surjan Singh R.W. 17, who was also Gurdial Singh's agent, was keeping his office. That Barkat Singh was noticed signalling to Jagat Singh to push forward in the queue at the polling station. That when Jagat Singh was challenged and arrested some polling agents of Gurdial Singh who was near, tried to assert that he was the right man and that it was no case of impersonation.

That one of Gurdial Singh's agents helped Jagat Singh to call a relative of his to stand surety for his release on bail. That after Jagat Singh's trial and conviction on his own confession, the respondent Gurdial Singh argued his appeal for reduction of sentence and charged no fee from him for this work.

19. All the above circumstances are capable of explanation on a hypothesis other than the knowledge or consent of Gurdial Singh or his agent being there to the offence of personation by Jagat Singh. There is nothing to show that Barkat Singh had known Jagat Singh, or was aware that Jagat Singh was not himself a voter and was attempting to personate for his brother. He may have signalled to the man in the queue just in the ordinary way to ask the voters who were known to support Gurdial Singh to hurry up and not to be tarrying and wasting time. It was quite natural for Gurdial Singh's agents in the heat and enthusiasm of the election to dispute the challenge to the identity of the voter who was not making any secret of his intention to vote for their candidate Gurdial Singh. We cannot infer from this that they were aware of his attempt to personate. Gurdial Singh himself could well undertake to plead for the man in court without being even remotely accessory to the crime only with the intention of helping a man who was found to be his supporter in the election. It is quite possible that Prem Singh as an over zealous sympathiser of the Akali Party was volunteering to work for the party candidate without knowledge, consent or connivance of Gurdial Singh or his agents. We do not doubt the impersonation of Jagat Singh but cannot see our way to find the corrupt practice in the clause (3) of 123 established against the respondent. Jagat Singh's act in itself may amount to minor corrupt practice under clause (1) of Section 124 but no action on our part in respect of commission of that corrupt practice seems to be called for in view of Jagat Singh's conviction out of which his disqualification under section 141 must necessarily result. Except Jagat Singh's evidence which without corroboration on the point we cannot take to be sufficient, we have nothing to prove that Prem Singh had known Jagat Singh or had reasons to think that he was not Teja Singh. His persuasion of Jagat Singh to go to the poll and providing him with slip of Teja Singh's number cannot be accepted as adequate proof of abetment of Jagat Singh's offence by him and we cannot therefore name him for Jagat Singh's corrupt practice.

20. Regarding Desa Singh's impersonation also and application for ballot paper as Fauja Singh at Bassi Polling Station there is no doubt. The man confessed to the charge at his trial and has been convicted though in his statement to the Presiding Officer Shri Murari Lal Puri (P.W.1) which was taken when he was arrested upon being challenged, he tried to maintain that he was Fauja Singh. The man was arrested on the complaint of Dilbagh Rai P.W. 4 to whom information regarding this attempt at personation was given by Sadhu Singh P.W. 15. Sadhu Singh has explained how he had come to know that Desa Singh was going to vote in the name of Fauja Singh who was absent from the village. On this point again the respondent tried to make out the absurd position of Sadhu Singh, who was instrumental in exposing Desa Singh's fraud having himself induced Desa Singh to commit this impersonation and then exposed him treacherously. Bela Singh R.W. 9 was produced to give evidence that Sadhu Singh himself had taken away Desa Singh from the shop of Bela Singh's son where Desa Singh had happened to be casually sitting. We think the evidence of Bela Singh is worthless as it would seem to be falsified by the statement of his own son Hazur Singh R.W. 10 that his father was never looking to his shop.

21. But from this we may not infer that Sadhu Singh's statement about the person who had instigated Desa Singh must be unqualified truth. Sadhu Singh stated that he had seen one Partap Singh Bajwa persuading Desa Singh at Hazura Singh's shop to come to exercise vote and then taking him to the polling station. We have, however, nothing to show that this Partap Singh Bajwa was agent or worker appointed by Gurdial Singh so that this procuring of Desa Singh to apply for ballot paper could be ascribed to the respondent as a corrupt practice committed by him. Jaswant Singh R.W. 12 who was the principal man working for Gurdial Singh at Bassi states that he did not know Partap Singh and had not appointed him to work for Gurdial Singh. It is quite possible that this Partap Singh was voluntarily trying to do a bit in support of Gurdial Singh's election by inducing some person to vote for him but there is nothing to show that he did it with knowledge, consent or connivance of Gurdial Singh or of any of his agents. We are not impressed by the evidence of Dilbaghrai P.W. 4 and Hari Ram P.W. 3 when they say that in the Polling Station Jaswant Singh had tried to support Desa Singh that he was in fact the proper man Fauja Singh. Jaswant Singh as R.W. 15 repudiates it and we do not find anything in the evidence of Shri Murari Lal Puri Presiding Officer to suggest that any one was earnestly maintaining the identity of the man as Fauja Singh. A casual remark by Akali workers that the challenge about identity was being made to harass the man because he was suspected to be supporter of the Akali candidate, would not mean that the man had been brought up by the efforts of Akali workers. We do not find any adequate evidence or circumstances in this case also to hold that the respondent was concerned in this corrupt practice or that Partap Singh Bajwa had abetted it. Desa Singh's act would be minor corrupt practice under Section 124(2) but in view

of his conviction we do not find it necessary to record any finding about it here for his disqualification.

22. *Issue No. 7.*—In para. 8 of the particulars the petitioner has made allegations about conveyance of voters by respondent's men to Kulaur Polling Station in a motor vehicle PU 3529. These were intended to be allegations of the corrupt practice under section 123 clause (6) that is of procuring whether for payment or otherwise of a vehicle by a candidate or his agent or by any other person with the connivance of the candidate or his agent for the conveyance of any elector. A written complaint about use of this vehicle by about 5 or 6 men who had come to the polling station with the idea of exercising their vote was handed over to the Presiding Officer with a statement therein that the men on getting down from the vehicle had come into the Polling station to apply for ballot papers when the congress candidate's agent created a row about the men having arrived by the Bus. That thereupon these men took counsel and having pondered over the situation decided to go away without applying for ballot papers. That when they were thus moving away, the polling agent of Gurdial Singh is said to have remarked that people were being unnecessarily harassed. In the complaint it was further stated that the Sub Inspector of Police on duty had seen those men and questioned them and an inquiry from him could vouch for the truth of the complaint. The petitioner has stated that in spite of this open complaint on the spot, no action by the Presiding Officer or the Police Officer on duty was taken. We heard the evidence of Kishori Lal P.W. 6 who made the written complaint and of Bachan Singh P.W. 21 and Sucha Singh P.W. on this point and having regard to the facts and circumstances that the complaint was made so publicly with full details upon the correctness of any of which if not true to fact the complainant might have been openly contradicted by the persons present we feel that it must be true. We find that a batch of electors was brought to the Polling Station in that vehicle PU 3529 which was at Kulaur Polling Station on that day. That the men withdrew without applying for ballot papers does not make any difference as to commission of the corrupt practice. The complaint is Ex. P. 12 and on it both the Presiding Officer and the A.S.I. on duty have endorsed that verbally the complaint had been made to them but they did not deem it necessary to take any action because the allegation could be made a ground of election petition. This evidence is not to be explained away by proof of the fact that this vehicle happened to be at Kulaur on government work having been requisitioned by the Government as stated by Mukand Singh P.W. 19 and given in charge of the police for use at polling stations as stated by Bishan Singh, Election Qanungo Bassi R.W. 3. From these facts we cannot infer that the allegation about the electors having been brought in the vehicle is unfounded but can only imagine that during polling hours when it was not required for governmental work the persons who were in charge of that requisitioned vehicle were obliging enough to lend its use for electors to reach the polling station. In the complaint it is specifically mentioned that the men were carrying electoral number chits issued in the camp of the respondent Gurdial Singh which shows that they had given out their mind to vote for the respondent.

23. But here again we find ourselves unable to hold the corrupt practice under clause (8) of Section 123 brought home to the Respondent because we have no evidence that the vehicle was taken from the Police by any agents of Gurdial Singh to fetch their voters. The remark of Gurdial Singh's polling agent S. Ahit Singh that these voters were being unnecessarily harassed by making that complaint, will not justify an inference that any agent of Gurdial Singh had demanded from the police and procured the vehicle. It is not however impossible to imagine some officers in sympathy with Akali Party or with the respondent personally to have been rendering such bits of service to Gurdial Singh without his knowledge, consent or connivance and therefore in the absence of any evidence to show that he or his agent had procured the vehicle for conveyance of those electors, we cannot find that corrupt practice under section 123(6) was committed by him.

24. *Issue No. 8.*—In paragraphs 9 to 24 of the particulars the petitioner has complained of a series of acts of certain Government Officers on duty during election stating that they were in conspiracy with Gurdial Singh and were doing the acts alleged in furtherance of the prospects of Gurdial Singh's election. Most of the acts complained of namely those enumerated in paras. 10 to 21 are alleged in connection with the polling at Talanian and Dhunda and are attributed to the Presiding Officer S. Ranbir Singh P.W. 32 who presided first over the polling at Talanian from 17th to 19th January, 1952 and later at Dhunda from the 21st to 23rd January. In paragraphs 22 to 24 some vague complaints have been made regarding happenings at some other places during polling, because the officials

concerned were communal minded who were out to help Gurdial Singh. No evidence was, however, produced to prove these. In paragraph 9 there is allegation that the Returning Officer being himself communal minded was not heeding these complaints when they were made to him during the progress of the polling. We take it that the petitioner has abandoned the complaints against other officers except S. Ranbir Singh.

25. We do not know if the petitioner considered S. Ranbir Singh to be more communal minded than others against whom he did not want to prove anything. Between the petitioner and this Officer there was undoubtedly a regular passage at arms. We think the true genesis of the trouble between them is the fact that this officer was selected for appointment as Presiding Officer of Talanian Polling Station. Talanian is a big village which formerly had a large muslim population. When the muslims moved away to Pakistan, a horde of men of the Bazigar class moving from Pakistan entered the village. The allotment of lands and houses of the evacuees in this village has, however, been secured by a group of jat sikhs from Sheikhopura district headed by S. Joginder Singh Mann. This caused flutter and resentment amongst the Bazigars. The Manns are with the Akali Party and so all the Bazigars as opponents of the Manns are throwing their lot with the congress party. With their support the petitioner seems to have regarded Talanian as one of his strong holds. As we have stated the petitioner had his mind full of suspicion that officers in the Fategarh Sahib district were communal minded and it seems that about S. Ranbir Singh he had a feeling that he was pro Akali. Whether he was that or not we cannot definitely say but one thing seems clear that he had no love for the petitioner perhaps for the reason that the petitioner was in season and out of season criticising the officials. S. Ranbir Singh admits that he had known the petitioner for long time. The petitioner has alleged a conspiracy between S. Ranbir Singh and the respondent Gurdial Singh in pursuance of which he is said to have been doing the complained acts to help the cause of the respondent. There is absolutely no material to prove any conspiracy or even understanding between them. In fact S. Ranbir Singh wants to say that he had not even known or met Gurdial Singh before the polling days. His pro Akali leanings suspected by the petitioner, may have been the result of his prejudice against the petitioner. In this way when the election opened at Talanian, the petitioner and S. Ranbir Singh started with definite prejudices against each other. The petitioner looked upon every act of order of the Presiding Officer suspiciously as intended to harm his chances in the election and incidentally to favour the Akali Party candidate. S. Ranbir Singh on his side was not inclined to show any consideration to the petitioner or to make a secret of his aversion for him. The result was the accumulation of a sizable file of complaints and recriminations.

26. The trouble seems to have started with the very opening of the polls on the 17th January at Talanian. The petitioner seems to have been anxious to get the large number of Bazigar votes in Talanian to be polled without delay, so as to create an impression of his easy leading at the polls against the rival candidate. He wanted to enter the polling station to look to the arrangements as he states but perhaps the real object was to infuse enthusiasm amongst his supporters by his presence. The Presiding Officer might have regarded it in this light and he objected to his entry, showing that he did not want the petitioner to get any such advantage. In view of the persistent refusal to allow him admission, the petitioner by Ex. P. 36 wanted him to give a writing about such refusal. On this the Presiding Officer wrote the following:—

"The candidate can stay up to his camp. Within the booth he can be a source of canvassing as objected by the agents of the other party"

It seems that the Presiding Officer was carrying an impression in his mind that the rules permitted admission of one man on behalf of each candidate within the polling station and that when one man on behalf of a candidate was already admitted and was available for work inside, the candidate himself had no business to come in. It is possible that the Akali Party Polling agents had objected to the petitioner's entry alleging that if he were allowed inside he might do canvassing, a suggestion which the presiding officer seems to have been only too ready to pick up for justifying his refusal. This is evidently what he meant to convey in the order reproduced above. His position was untenable in view of Rule 17(1)(b) of the Representation of the Peoples Rules, 1951 which allows, "each candidate, his election agent and one Polling Agent of each candidate" to be present simultaneously. Realizing this now he has offered an explanation before us, that the petitioner had been admitted to the Polling Station but was found to be canvassing inside and so was asked to leave. This is quite against the tenor of his own writing in Ex. P. 36. The complaint was made by the petitioner at a very early hour

(10-5 A.M.) after the opening of the polls and we do not find it believable that the petitioner had given any indication at that time of acting in an illegal manner by resorting to canvassing within the polling station. We have it in the evidence of Shri Ram Pratap Garg P.W. 7 who was a candidate for the Parliamentary Seat, that his admission was also objected to when he went to the Polling Station on the 18th. But after he had protested and told the Presiding Officer that as a candidate he was entitled to admission the Presiding Officer relented and allowed him in. At that time perhaps the Presiding Officer seems to have realized that every candidate had a right of admission in the polling station and so that day even Sunder Lal had been suffered to come in.

27. The respondent Gurdial Singh visited the Polling Station Talanian for the first time in the afternoon of the 18th i.e., after the incident deposed to by Shri Ram Pratap Garg and there was no objection to his entry. Parkash Chand who was one of the Polling Officers, in his evidence as P.W. 8 speaks of the contrast between the Presiding Officer's treatment of the respondent Gurdial Singh when he came, and the treatment meted out to the petitioner on the previous day. In the evidence of Vidya Sagar P.W. 25 also it appears that he considered the Presiding Officer's behaviour towards the petitioner as indifferent and impolite and tending to show contempt and in contrast the Officer appeared to him rather polite and friendly towards Gurdial Singh. We think that the Presiding Officer was not making any secret of his dislike for Sunder Lal but do not infer that he was showing any special consideration to Gurdial Singh. If any such contrast appeared to the onlookers it was due to the Presiding Officer having grown wider by the time Gurdial Singh happened to come and having realized that every candidate had a right to admission his entry was not objected to. As Gurdial Singh had been allowed admission without any objection while previously objections had been taken to Sunder Lal and Shri Ram Pratap Garg, the people around might naturally have carried an impression that the Presiding Officer was inclined to show favour to Gurdial Singh. We do not treat this incident as proof of any bias shown in favour of Akali Party candidate much less as evidence of any conspiracy between the Presiding Officer and Gurdial Singh.

28. By the side of the Polling Officer issuing identity chits to the electors, Raju Singh Patwari of Talanian P.W. 9 had been allowed a seat. The petitioner seems to have been objecting to the presence of that man thinking that he was purposely selected in order to take objections to the identity of Bazigar voters and so to scare away persons who were supposed to be voting for the congress candidate. Raju Singh may have had leanings towards the Akali Party. He had proposed the candidature of S. Joginder Singh Mann in the Sirhind Constituency where that gentleman was a nominee of the Akali Party. We are not however satisfied that Raju Singh was purposely put on duty there to cause harm to the petitioner or that he actually abused his position in that way. The village Patwaris were generally put on duty at Polling Stations on days when people from the villages in their areas were coming to the polls. This was permitted by rule 24 which provides "The Presiding Officer may employ at the polling station such persons as he thinks fit to assist him or any polling officer in identifying the electors". The Complaint, however, is that this particular Patwari was unnecessarily raising doubts about identity of a large number of Bazigar-voters and some witnesses Vidya Sagar P.W. 25, Niranjan Singh P. W. 27 and Hardit Singh P.W. 30 have stated that Raju Singh had raised objections to as many as 200 Bazigar voters during the course of that day. That in consequence of the objections the men were made to sit aside and not to get ballot papers and in the evening at the close of the polls were ordered to go away without exercising votes. The petitioner in his own evidence says that even at the early hour of 11 A.M. when he left the Talanian Polling Station he had found at least forty men being thus detained. We think this is clearly an exaggerated and unreliable version of the actual happening. Both the Presiding Officer and Raju Singh state that objections were no doubt taken to some Bazigar voters but their number did not exceed fifteen and most of these who were able to establish their identity were allowed to exercise their votes. The Bazigars are a wandering tribe, and though quite a large number of them made their home at Talanian from 1947, some out of them have since left the village to earn their livelihood elsewhere while some new men appear to have come and started living in the village recently. Consequently there must have been some difficulty about identification of some of the Bazigar voters, but we cannot infer from this that they generally received an unfair deal in polling their votes. It is significant that the petitioner and his polling agents though they were so particular about putting their complaints in writing often times about comparatively trivial matters, did not make any written complaint about such a large number of voters being shut out. We have not been vouchered any information as to the names or electoral roll numbers of the voters who were thus refused

ballot papers. One witness Brij Lal P.W. 28 did name two persons, Sardari Lal son of Bodha Raj and Mst. Khandhobai who were to his knowledge objected to and who had to return without exercising vote. We have looked into the marked copy of the electoral roll and find that both these persons (Khandhobai who is serial number 48 and Sardari Lal who is serial number 233) had been allowed to cast their votes. Infact the list of the tendered votes for this day shows that there were atleast three men who had voted on the name of Sardari Lal and there were some other tendered votes of the Bazigars as well. This shows that there was good reason for taking care of allowing the bazigars to get ballot papers after closer scrutiny of their identity. We do not find any substance in the objection of the petitioner regarding Raju Singh's conduct or in his allegation that Bazigar voters were unnecessarily shut out from voting.

29. Another complaint which the petitioner has against the Presiding Officer at Talanian is that on 19th January he arrested the petitioner's agent S. Didar Singh and sent him to Thana Bassi in custody. That he did this to overawe the petitioner's polling agents and voters and to help Gurdial Singh. This help he suggests was indirectly rendered by this arrest of Didar Singh which influenced the procongress atmosphere at the Polling station. Didar Singh is a resident of Bahadurgarh where he is Lambardar and Sufedposh. The holding of this office would bring Didar Singh within the category of persons serving under the State Government according to explanation (b) under clause (8) of section 123, and, therefore, his appointment as polling agent by the petitioner might have exposed the petitioner to a charge of commission of a corrupt practice under that clause. Commission of this corrupt practice does not amount to any criminal offence for which immediate arrest of the persons concerned could be ordered. We have nothing on the record to show that actually Didar Singh was put under arrest or taken to police station Bassi. The Presiding Officer S. Ranbir Singh explained in his evidence that for two days he had permitted this Didar Singh to act as polling agent, but on the third day being apprised of the fact that he was Lambardar, upon the application of Gurdial Singh, he stopped Didar Singh from working and ordered him to present himself before the Deputy Commissioner. We think that in taking this step also the Presiding Officer showed more enthusiasm than a proper sense of his duty as Presiding Officer required him to do, Didar Singh's acting as polling agent could amount to aiding in the commission of corrupt practice for which Didar Singh may have exposed himself to disciplinary action by a Revenue Officer exercising control over the lambardars. If Gurdial Singh reported against the man, all that was required of the Presiding Officer was to forward that report to the Revenue Officer concerned with his own statement that the man had infact acted as polling agent. We do not know of any provision under which the Presiding Officer was entitled peremptorily to remove him from working for the petitioner. We are not, however, satisfied that this overdoing by the Presiding Officer was with the intention of helping Gurdial Singh in the election or did infact give any assistance for the furtherance of the prospects of his election. Even though the action was taken on the application of Gurdial Singh this cannot be construed as a commission by Gurdial Singh of the corrupt practice under clause (8) of section 123.

30. This Presiding Officer appears to have made use of 'sani' or hemp fibre for sealing the ballot boxes on the second day of polling instead of the 'sutli' which the election department had approved and supplied for the purpose. Objection was taken to this at the time of sealing up the ballot boxes and it has been repeated in the election petition as one of the wrongful acts of the Presiding Officer done to help the respondent. The Presiding Officer explained that he had run short of the 'sutli' and as locally at Talanian no 'sutli' could be available he used this hemp fibre which was available at the time. The objection was based on the alleged fear of the tampering of the ballot boxes because they could be easily opened when sealed in this way and the suggestion is that this was deliberately done with the object of opening the ballot boxes and transferring the votes from other boxes to the ballot box of Gurdial Singh. We have nothing to show if this was possible by the use of 'sani' instead of 'sutli' nor has it been stated, what if any discrimination had been made in selecting the boxes of particular candidates for this treatment by 'sani'. We can, therefore, only regard the suggestion as fantastic and cannot find fault with the Presiding Officer for using a different material in the emergency.

31. These were the complaints made against S. Ranbir Singh about his actions as Presiding Officer at Talanian. The petitioner was inclined to take a very serious view of these matters and was apparently feeling quite exasperated thinking that this Presiding Officer was bent on doing harm to the prospects of his election. Accordingly at the end of three days polling the petitioner delivered notice to S. Ranbir Singh himself that he considered him to be partial and had no confidence

in him and that he should stop working. The petitioner also wrote to the Returning Officer not to allow S. Ranbir Singh to act as Presiding Officer at Dhunda Polling Station where he was to proceed next according to programme already settled. The Returning Officer did not think the situation to be as grave as the petitioner considered it from his point of view to be and he decided that S. Ranbir Singh should go to Dhunda as already settled and so he did. This inaction of the Returning Officer is also complained of in this petition as an instance of the assistance which he had rendered to Gurdial Singh in furtherance of his election. We cannot view the matter in this way and do not think that commission of any corrupt practice by Gurdial Singh through the agency of Returning Officer can be found to be established.

22. Yet another complaint which the petitioner has to make against the working of this Presiding Officer at Talanian is that he was going inside the polling compartment every few minutes on the pretext of helping the blind electors to cast their votes but never maintained a list of such voters as enjoined by Rule 26. It is suggested that no record was being kept because the Presiding Officer was actually entering the Polling compartment more times than necessary only to deal with stray ballot papers which the ignorant electors left outside the ballot boxes. It is further suggested that the Presiding Officer used to pick up these papers and introduce them into the ballot box of the respondent. We find no evidence to bear out this suggestion so far as Talanian Polling Station is concerned and cannot make anything of the suspicions of the petitioner or his polling agents on the point. The Presiding Officer no doubt omitted to maintain a record of these blind electors in the manner contemplated by Rule 26. This required him to "keep a brief record of each such instance without indicating the manner in which the votes have been cast". This obviously required him to enter in a list atleast the electoral roll numbers if not the names also of the infirm voters as they came along and were helped. This rule is not complied with by a mere mention of an approximate number of persons so helped, in the daily report submitted to the Returning Officer after the close of the polls. S. Ranbir Singh is not found to have been preparing such record which may be due to his ignorance of the precise requirements of the rule and we may not infer any sinister purpose behind the failure to comply with it. The Presiding Officer has pointed out that at Talanian he had to cancel as many as 109 votes on the first day which were the stray ballot papers left outside the boxes. He says that the situation improved from the next day because he had made an arrangement to demonstrate to the electors before entering the polling compartment how the ballot paper was to be put into the box. We think we should accept this explanation though the petitioner persists in expressing his suspicions that the number was reduced because the Presiding Officer was putting many of such ballot papers into the box of the respondent.

33. In this way things had moved fast and furious at Talanian for three days when the scene shifted to Dhunda. The petitioner finding that his ultimatum for replacing S. Ranbir Singh went unheeded and the Sardar was again to be there at Dhunda, decided to reinforce his side in order to be able to more effectively control the suspected propensities of this Presiding Officer in favour of the Akali party Candidate. The two non-legal men whom he had originally proposed for appointment as his polling agents there, were replaced by two of his legal colleagues B. Kedar Nath P.W. 13 and B. Kishori Lal P.W. 6 from Bassi. At Talanian the petitioner had several complaints against the Presiding Officer about the treatment meted out to his polling agents and about his refusal to allow ordinary facilities and opportunities to the polling agents to enable them to check up the process of identification of electors. For the first two days 21st and 22nd January at Dhunda the Presiding Officer acted very tactfully and in a statesmanlike manner and for those two days calm seemed to have prevailed and the working to have gone on smoothly at Dhunda Polling Station. But the storm broke out on the third day. During the two days the Presiding Officer seems to have been very courteous towards the petitioner's polling agents and at the end of the second day on his requesting them for a testimonial one was given by Babu Kedar Nath as under:—

"I have no complaint regarding the working of the Polling here at Dhunda. Everything is going on properly since I resumed my duty at Dhunda as an agent. The Presiding Officer is quite accommodating and fair towards his duties."

To this B. Kishori Lal added.

"I endorse the same."

The Presiding Officer at once prepared a copy of this certificate and forwarded it to the Returning Officer for information. Meanwhile soon after the starting of the

polls on the 21st a telegram had already been despatched by Jagir Singh the Polling Agent of the respondent to the Chief Electoral Officer

"Presiding Officer Dhunda unduly favouring Congress candidate by putting votes congress box left on the boxes. Canvassing the votes for congress Polling Booth selected."

This message having been sent to the Presiding Officer for his explanation after the election was over, he made the following report on 18th February 1952:—

"It is rather surprising to note the contents of the telegram dated 21st January 1952 from Jagir Singh Polling agent Dhunda to the Chief Electoral Officer Patiala. There had been no such favour by the undersigned to any party. The report is fictitious and baseless. Such complaints have been made by the agents of both the parties against the presiding officer which shows that the Presiding Officer had been most impartial and honest in the performance of his duties. The under-signed never talked to any voter or any other person during the polling period except the polling agents, polling officers or the candidates who had been to the polling station during that period. This is nothing more than mud throwing."

34. The storm had, however, burst at Dhunda on the 23rd. That day the Presiding Officer had gone into the polling compartment ostensibly to help a voter who had gone in and seemed to be taking time to come out. The Presiding Officer was observed to have been tarrying inside the compartment even after the voter had left it. This aroused the suspicion of B. Kedar Nath who, as he states, went up to the entrance of the compartment and peeped in to find that the Presiding Officer had a few ballot papers in his hand which he was trying to introduce into the box with the symbol of 'Tir Kaman'. B. Kedar Nath raised an uproar charging the Presiding Officer with this mode of dealing with stray ballot papers. He at once put his complaint in writing and obtained the Presiding Officer's acknowledgment. That complaint is Ex. P18. It is in the evidence of Kedar Nath P.W. 13, Parkash Chandra P.W. 8, and Vidya Sagar P.W. 25 that when Kedar Nath created a row about this incident, the Presiding Officer tried to appease him by promising that he would put some stray ballot papers into the box of the congress candidate if Kedar Nath would accept it as a requital and refrain from making any complaint. Kedar Nath did not agree and the complaint was written and handed in. About the time it was being handed over the petitioner himself happened to reach the polling station and he states that to him also the Presiding Officer made a similar proposal which, however, he treated with contempt. In the written report there is no mention of any such terms of conciliation offered by the Presiding Officer. We, therefore, do not consider it safe to accept this evidence to infer from it the truth of this charge against the Presiding Officer. The Presiding Officer's explanation of the incident is that he had to go into the polling compartment to see what that voter was making delay for. He found that the man was trying to push in his ballot paper into the box of B. Sunder Lal but the paper was wrongly introduced in between the wood and the iron piece under the slot so that it would not be put into the box nor pulled out without tearing. He had, therefore, to take a piece of iron rod and with that instrument to carefully release the paper. This needed some time and B. Kedar Nath thus found an opportunity of making out a faked story and a false charge against him. According to Kedar Nath the Presiding Officer had come out with the last ballot paper in his hand which he had not been able to put in the box due to the raising of his uproar. The Presiding Officer on his part refers to the same ballot paper as the one which he had released with difficulty from the ballot box of B. Sunder Lal and which he then treated as cancelled. As to what actually happened inside the polling compartment we have only the word of B. Kedar Nath on the one side and of the Presiding Officer S. Ranbir Singh on the other.

35. The petitioner argues that S. Ranbir Singh had during the first two days very shrewdly over-whelmed B. Kedar Nath and Kishori Lal by his courtesy to put them off guard and so when he solicited their testimonial, they quite unsuspectingly wrote it out as above and that he was all throughout acting as a friend of the Akali Party candidate. He suggests that the telegram of Jagat Singh to the Chief Electoral Officer was part of a scheme to hood-wink the authorities and keep ready evidence of his honesty and impartiality, while he was actually anti-Congress and pro-Akali. S. Ranbir Singh on the other hand says that the petitioner had sent B. Kedar Nath and Kishori Lal to Dhunda on purpose to bring him into trouble. That the petitioner was, therefore, annoyed with those agents at their conduct in giving a testimonial to him (Presiding Officer) quite contrary

to his expectations. That to save their face with the petitioner, they created this row and levelled the false charge against him. We have no prove to determine which of these conflicting theories should be acceptable as the precursor of the above charge and would refer to leave it with the remark that in the absence of any evidence to corroborate the evidence of B. Kedar Nath, we find that this charge is not proved.

36. On the same day Bhagwan Singh who was another polling agent of the petitioner was taken into custody on a charge of canvassing within the premises of the polling station. He was taken to Bassi Thana from where he was released without any charge being preferred against him in court. The petitioner attributes this act to the Presiding Officer and alleges that it was done just to create sensation and influence the Congress workers and voters and encourage the Akali voters and workers. S. Ranbir Singh denies that he caused Bhagwan Singh to be arrested. He says that the Police Officer on duty had arrested and brought Bhagwan Singh before him and he only ordered the man to be dealt with according to law. Whether it was intended or not, this arrest of the petitioner's polling agent must have created an impression on the people that Congress workers were being treated with scant consideration. Karm Singh P.W. 22 and Vidya Sagar P.W. 25 state that after arrest Bhagwan Singh was kept in charge of the police constables and even paraded before the public. We think this may be an exaggerated version of the incident. Bhagwan Singh P.W. 26 has nothing to say about indignities offered to him and only complains that he was arrested on a false charge of canvassing which he never did. We cannot find that this arrest was with a view to help the cause of the Akali Party candidate or any corrupt practice can be brought home to the Respondent by the act of the Presiding Officer or the police arresting Bhagwan Singh and later releasing him.

37. This finishes our examination of the particulars stated in paragraphs 9 to 20. In paragraph 21 there is a generalisation of all the happenings during the six days of the polling at Talanian and Dhunda, and an allegation that inaction of the Presiding Officer and the Police on the complaints showed that they were all canvassing, helping and giving the voters impression that all of them wanted the success of S. Gurdial Singh. What we have already said would show that though the petitioner may have carried such impression in his mind, there is not adequate material on which to find that there was any complicity between Gurdial Singh and the Presiding Officer and the Police and we are unable to put the charge of any corrupt practice through assistance of these Government Servants at the door of the respondent. The petitioner was undoubtedly rather touchy and S. Ranbir Singh not quite well disposed towards the petitioner and showed himself rather aggressive which the petitioner interpreted as evidencing his pro-Akali leanings. This created clashes and furore at these two polling stations the like of which were not witnessed elsewhere. We find, however, on issue No. 8 that no corrupt practice is established in regard to the particulars in paras. 9 to 24.

38. Issue No. 10.—In paragraph 27 of the particulars the petitioner refers to printed Post Cards like Ex. P40 (referred to as Ex. P5 in the petition) which the respondent is alleged to have sent out to voters who were absent from the places where their names appeared in the electoral rolls. This post card does not bear the name of the press where it was printed and the respondent sought to prove that it was not one of the post cards which had been printed for him or used by him. Another printed card Ex. P34 has been produced which bears the name of Darshan Press, Patiala and which is printed according to the respondent's draft Ex. P33. There is slight variation in Ex. P40 from Ex. 34, that the markings and words printed in the former at the head of the message are different from the same in Ex. P34 but we find that these markings and words in Ex. P40 are the very same as in another poster Ex. P11 which admittedly has been printed at the same Darshan Press, Patiala at the cost of the respondent. We are inclined to think that post cards like Ex. P40 were perhaps printed for the respondent as part of his large order of 4000 odd cards which he had placed for printing at Darshan Press, Patiala according to his manuscript Ex. P33. Ex. P40 was posted to voter Rattan Singh P.W. 34 residing in Jammu at the time of election and on the evidence of that witness we have no doubt of its genuineness. We can only infer that Darshan Press met the large order of the respondent by printing from two blocks as in Ex. P34 and P40 but in the latter omitted inadvertently to print the name of the Press. So far as the message of the two which is being relied on for proving religious or communal appeal, it is word for word the same in both.

39. This inadvertent omission of the name of the Press does not in our view make out an illegal practice under S. 125(3) of the R.P. Act. That clause (3) seems to us to refer to the case of omission of the name of the printer and publisher both and is not attracted whereas in this case of Ex. P40 the name of S. Gurdial Singh as publisher is mentioned. We are in doubt also if this post-card intended for being posted to some individual persons and not for circulation generally can be taken to be a circular. It is certainly not placard or poster. We think it is not circular either which word according to the Dictionary means 'addressed to a circle of persons'. This was intended to be addressed to each voter individually. We accordingly find issue 10 in the negative.

40. *Issue No. 3*—In paras. 25, 26 and 27 of the list of particulars it is alleged that S. Gurdial Singh respondent No. 1 issued posters, placards, post-cards in the name of religion for furthering his election. There is the allegation that in meetings and from platform and in private canvassing he systematically appealed to the religious sentiments of the Sikhs by calling himself and posing as a representative of Sikh Religion, (Panth) and not that of Akali Party. Written appeal is also stated to be made as in poster Ex. P. 11 in which he is alleged to have been styled as a candidate of Sikh Community and which bears the flag of Sikh Community. S. Gurdial Singh issued printed post-cards to the voters bearing the flag of Sikh Community and Sikh religion and described himself therein, as the nominated candidate of the Sikh religion as in Ex. P40.

In para. 20 of the election petition the petitioner states that respondent No. 1 used religious flag (Nishan Sahib) in meetings on their buses engaged for canvassing, on posters, letters, placards and in his camp at the various polling stations. With reference to these allegations we have to examine evidence on record to come to definite conclusions.

41. *Firstly as to the use of religious flags on posters like Ex. P. 11.*—Posters like Ex. P.11 were issued by the General Secretary of the Shiromani Akali Dal. Their printing charges were paid by the respondent No. 1. Therefore, the Secretary Akali Dal can rightly be considered as an agent of respondent No. 1. The posters were accepted by the respondent as appropriate propaganda on his behalf and freely put up by his workers in the various villages of the Constituency. This fact is admitted by a large number of witnesses of S. Gurdial Singh also. In Ex. P.11 a symbol of a 'chakkar', a 'khanda' and two kirpans all combined in one sketch appears at the two upper corners of the poster. This is also to be found in Ex. P40. This cannot be confused with a sikh flag called 'Nishan Sahib'. A Sikh flag 'a Nishan Sahib' consists of a flying triangular piece of cloth generally of yellow or blue colour mounted on a long pole on which a sketch of a chakkar, khanda and two kirpans generally as in Ex. P.11 or Ex. P40 is displayed, which is not the case here. The import of such a sketch is to be determined with reference to the writing appearing in Ex. P.11 and P40. In the centre of the first line in these is printed " (Ekonkar Sri Wah-guru Je Ke Fateh), which means God is one and victory is His. In Sikh Theology this word "Onkar" is used to describe the sound which emanated from God and gave birth to the creation of the Universe. Therefore, the word conveys the idea of the All-mightiness of God.

42. In the same line at both the corners are printed the above mentioned combined sketches of arms. In Sikh Theology out of innumerable attributes of God, the attributes that he holds in His hands, arms used for cutting purposes and that He vanquishes the enemies of his votary, are there. Such arms are of different kinds including those which are used for striking while gripped firmly in hand such as kirpan and a khanda; also those of the nature of arrow and chakkar which are used as missiles by the force of hand and are flung at the enemy. So the first line of the poster connotes that for Gurdial Singh protection of God Almighty is invoked for his success and that this success would not be his but that of His Protector, and that He may use His power against his opponent in Election and for his success. This is a prayer which every person having faith in God has a right to make for his success in every eventuality and we are not referred to anything in-law which prevents a person from so acting. In Article 25 (1) of the Constitution of India such a right is reserved to every citizen of India subject to the exigencies of Public Order, morality and health etc. These in our view have not been infringed by resort to this prayer. Not a word has been used in these documents against the petitioner, nor can any appeal be found to have been made on the ground of the religion by use of these marks for the furtherance of the prospects in election of respondent No. 1. Invocation of the blessings of God for one's success and for the success of every other in whom one is interested and against one's adversary cannot, we think amount to appeal to religion or community. In the second line over the block of respondents' photograph in Ex. P.11

is written 'Panthic Candidate'. The block itself has two Tir Kaman sketches on sides. Fourth line contains nothing worth mentioning. In the fifth line and the four succeeding lines on appeal is made to the voters of Bassi Constituency to vote for the Panthic candidate and thereby their help is requested for attaining success of the Panth. The message in Ex. P.40 also does not go further than this.

43. No objection may be taken to the displaying of the symbol of Tir Kaman since is officially allotted to Akali Candidate. The question for consideration is whether the word 'Panth' and its adjective 'Panthic' which have been freely used in both documents are such as amount to systematic appeal to vote or to refrain from voting on the ground of community of religion for the furtherance of the prospects of Gurdial Singh within the meaning of Section 124(5) of the R.P. Act. In this connection evidence of the parties has to be briefly reviewed. Petitioners' witnesses deposed about the propaganda carried on by the respondent and his workers in the name of Panth, describing Gurdial Singh as a Panthic candidate, and thus according to them resulted in inducing a number of the petitioner's would-be voters to withdraw support from the petitioner. Some of petitioner's witnesses are congress workers interested in supporting his view point of the adversary's propaganda. On the other hand the respondents' witnesses have stated that during the election Gurdial Singh was being described both as an Akali and Panthic Candidate for canvassing purposes. There are some witnesses like R.W. 7, 12, 14 and 15 who depose that the canvassing was being done for respondent No. 1 by referring to him as an Akali candidate. Reading the evidence of both sides we find no difficulty in arriving at the conclusion that propaganda was being carried on a large scale for Gurdial Singh by generally styling him as a Panthic candidate. We cannot depend on the oral evidence in this case to find anything more than this proved. Chattar Singh P.W. 14 Hazura Singh R.W. 6, Raja Singh R.W. 11, Sujar Singh R.W. 17, Waryam Singh R.W. 20, Bakhtawar Singh R.W. 21, Jagat Singh R.W. 22, Ujagar Singh P.W. 23, and Gurbaksh Singh R.W. 24 opine that people in villages observe no distinction between an Akali and Panthic candidate, and regard the words 'Akali' and 'Panthic' as synonymous and interchangeable. Giani Lachman Singh P.W. 24, himself a congress worker of repute describes Panth as a body of Sikhs who follow the teachings of the tenth Guru. In Amritsar South (Sikh) Constituency case reported as *Baba Gurdit Singh Versus Partap Singh Kairon* in Indian Election Cases by H. S. Doabia Volume I page 92 the decision revolved over the definition and import of the word 'Panth'. In that case Giani Sher Singh stated that the whole body of the Sikhs who believe in tenth Guru are called the Panth. The Tribunal remarked that they had no quarrel with that definition and observed that in practice small groups of Sikhs frequently claimed to represent the Panth and that the Panth was an indeterminate body and every one was entitled to give his opinion as to what constituted the Panth.

44. Only very recently the same question came up for decision before the Patiala Tribunal in Election Petition No. 268 of 1952 '*S. Sardul Singh Vs. S. Hukam Singh and others*' delivered on 12th May, 1953, reported at page 1743 *Government of India Gazette Part II Section 3* dated 28th May, 1953. In that case Bhai Jodh Singh a great Scholar of Sikh Theology stated that the word Panth was of Sanskrit origin literally meaning the 'way', but in Sikh religion it had been used to denominate collectively all these who followed the path of the tenth Guru and so to signify the Sikh Community. Bhai Jodh Singh also stated that 'Panthic Candidate' was now being understood as synonym of 'Akali Party' Candidate. The Tribunal found that the words 'Panth' and 'Panthic' had now gained so much currency as referring to the Akali Party that in their view no special religious or communal appeal was conveyed to a common man by their use than would be implicit in the officially recognised name of 'Akali Party' and that the use of these words could, therefore be treated as innocuous. The Tribunal pointed out that the Akali Party was making use of these terms to forcefully demonstrate the religious and communal character of their organisation. They however thought that no special appeal could be found to be conveyed to the voters by mere use of such words that their vote was being demanded for the Akali Party on religious grounds. Our conclusion, therefore, is that no corrupt practice is found to have been committed by the propaganda, made in favour of Gurdial Singh describing him as a Panthic candidate. This is our finding mainly based upon the opinion of that the Tribunal regarding the extent of the appeal which the use of these words actually convey to the minds of the voters. We cannot however avoid the feeling that use of such terms is adopted by Akali Party candidates in view of their closer association with the Sikh religion and community and so more readily understood by the common people than the name 'Akali Party' which has been taken by the party to show its exclusively political character. We should think that the party might well avoid use of such terms which would smack of the

propaganda as being odious in a Secular State and so against the spirit of the Constitution.

45. *As to the flying of Sikh National Flags at Polling Stations.*—In the list of particulars names of the polling station at which they were displayed, dates at which they were exhibited there were not mentioned. The petitioner when he appeared as his own witness as P. W. 35 did not say a word about these allegations. No question was put to Shri Murari Lal Additional District & Sessions Judge, Faridkot, Presiding Officer of the Bassi Polling Station examined as P.W. 1, to the petitioner's polling agent Kishori Lal Advocate his polling agent at Kalaur and Bahar to the polling officer Shri Parkash Chand at Talania and Dhunda examined as P.W. 8 or to Kedar Nath Advocate his polling agent examined as P.W. 13, on this point. These were the persons who were likely to notice the display of Sikh flags on the spot. Again no complaint in writing was made to the Presiding Officer, the Returning Officer or to the police about the use of such flags, when as a matter of fact petitioner has all along been very earnest in protesting to all sorts of alleged irregularities or illegalities committed during the period of election and by putting in writing the objectionable features observed during the elections. Further Janak Singh a Professor and the Presiding Officer at Gharooan and S. Jagjit Singh Mann A.S.I. on duty did not notice any Nishan Sahib on the polling station on which they worked. The record shows that P.W. 15, P.W. 16, P.W. 18, P.W. 19, P.W. 24, P.W. 26, P.W. 27 and P.W. 28 who depose as to the flying of Sikh flags at various polling stations made no complaint about it to any officer on duty there. Ranbir Singh Presiding Officer at Talania and Dhunda examined as P.W. saw no such flags at these stations. He further states that no complaint whether oral or written was made to him about the display of religious flags on any camp of respondent No. 1. In view of these facts we find that the petitioner has failed to substantiate his allegation under discussion.

46. *Issues 11 and 12.*—Due to improper rejection of two nominations we must declare this election in Bassi Constituency of the PEPSU Legislative Assembly to have been wholly void. We cannot find the respondent responsible for these improper orders of the Returning Officer and though the petitioner succeeds in his claim for that declaration we cannot award him costs against the respondent on that score. We have not recorded the finding about any corrupt or illegal practice having been proved against the respondent and accordingly nobody has to be named under Section 99 of the R.P. Act for disqualification. We cannot however help observing that there were some objectionable features in this election, which though they did not amount to corrupt or illegal practices sufficient to vitiate the election, might well have been avoided. The petitioner has acted quite properly in drawing public attention to such features through his election petition. We do not therefore order the petitioner to pay any costs and our order is that costs will be borne by the parties as incurred.

(Sd.) V. B. SARWATE, *Chairman.*

(Sd.) JIA RAM SAXENA, *Member.*

(Sd.) KARTAR SINGH, *Member.*

The 27th August 1953.

[No. 19/202/52-Elec. III/2014.]

By order,

P. R. KRISHNAMURTHY, *Asstt. Secy.*